

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAMMIE L. YERKS,

Plaintiff,

v.

Case No. 17-cv-1735-pp

PAMELA SHURPIT, *et al.*,

Defendants.

**ORDER ACKNOWLEDGING COURT’S ERROR, AND SETTING DEADLINE
FOR THE DEFENDANTS TO FILE A REPLY IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

On November 26, 2018, the defendants filed a motion for summary judgment. Dkt. No. 16. The plaintiff’s response was due thirty days later—by approximately December 26, 2018. Dkt. No. 13 (court’s scheduling order).

On January 7, 2019, the court received the plaintiff’s opposition brief, response to the defendants’ proposed findings of fact, and declarations. Dkt. Nos. 24-27. The court also received from the plaintiff a motion to “stay proceedings” for two weeks. Dkt. No. 23. The motion noted that the plaintiff’s response had been due right at the holidays, when the prison staff were on holiday schedules. He also stated that one of the inmates who’d been helping him with his filings had abandoned him, and the other was under clinical observation due to a suicide attempt. Id. at 1. He concluded by asking the court to “allow the additional time and accept” his response to the summary judgment motion. Id. at 2.

The clerk's office docketed the plaintiff's motion to "stay proceedings" first, followed by the response materials. The first thing the court saw was the motion to stay proceedings, and it reviewed that motion without looking to see if anything else had been filed that day. Consequently, the court thought that the plaintiff was asking for more time to file his response materials. It didn't realize he'd already filed the materials and was asking the court to excuse the fact that he'd filed them a little over a week late.

That misunderstanding caused the court to issue an order on March 18, 2018, requiring the plaintiff to respond to the summary judgment motion by the end of the day on April 5, 2019 or face dismissal. Dkt. No. 32. On April 1, 2019, the court received a response from the plaintiff, politely pointing out that he *had* responded to the motion for summary judgment. Dkt. No. 33. He offered to send the response materials again, if the court couldn't find them.

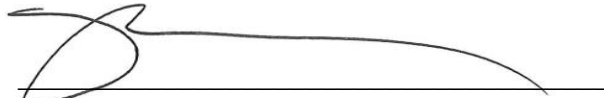
The court appreciates the plaintiff's courteous response, and apologizes for its error. The court will accept the plaintiff's late-filed response materials (although it will not "stay" the proceedings; there is no need for that). All that remains is for the defendants to file a reply in support of their motion (if they choose to do so).

The court **ORDERS** that by the end of the day on **Friday, May 10, 2019**, the defendants shall file their reply in support of their motion for summary judgment (if they choose to do so). If the defendants do not file a reply by the

end of the day on May 10, 2019, the court will decide the motion based on the pleadings currently on file.

Dated in Milwaukee, Wisconsin this 25th day of April, 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
United States District Judge